IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1339/2006

Reserved on.13.9.2007

Decided on.12.10.2007

Ashwani Kumar. **…Petitioner.**

Versus

Presiding Judge, Labour Court & others. **Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]. yes.

For the petitioner : Mr. R.P. Singh, Advocate.

For the respondents Mr. H.S. Rawat, Advocate for respondents No. 2 to 4.

Rajiv Sharma, J.

A challenge has been laid to the award passed by the Presiding Judge, H.P. Labour Court, Shimla on 21.11.2006 in a reference No. 83 of 1999.

The State Government has made the following reference to the Labour Court which reads thus:

1. **"Whether the action of the Management viz (1) The Regional Manager, Himachal Road Transport Corporation, Nahan; (2) The Divisional Manager, Himachal Road Transport Corporation, Shimla and (3) The Managing Director, Himachal Road Transport Corporation, Shimla in imposing two penalties on Shri Ashwani Kumar, Ex-conductor simultaneously stopping his one increment with cumulative effect and removal from service on the basis of enquiry findings by reviewing their own conclusions, is legal and lawful. If not, to what relief of service benefits including re-instatement, back wages, amount of**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

compensation & seniority w.e.f. 18.2.1997, Shri Ashwani Kumar is entitled?

2. **Whether the enquiry conducted by the management is fair and proper. If not, to what effect?**
3. **Whether the penalty imposed by the management on the worker is disproportionate/commensurate to the alleged offence committed by the worker. If not, whether the provisions of section 11 (A) of the Industrial Disputes Act, 1947 are attracted in this case?"**

The Labour Court had issued notices to the petitioner and respondents-department (hereinafter referred to as the workman and employer respectively for convenience sake). The workman had filed his statement of claim and the employer had filed reply to the claim. The Labour Court after considering the oral as well as documentary evidence led by the parties answered the reference in negative on 21.11.2006.

The brief facts as projected in the writ petition by the workman are that the disciplinary proceedings were initiated against him under rule 14 of the CCS (CCA) Rules, 1965 vide letter dated 6th February, 1998. Shri Hemant Kumar was appointed as the Inquiry Officer. The inquiry was concluded in the year 1988. The workman was issued notice by the respondent No.3 on 1.11.1996 whereby for the first time the copy of the inquiry report was enclosed. The workman was called upon to make a representation against the proposed penalty of removal from service. The workman was directed to appear for personal hearing. He appeared before the disciplinary authority i.e. the Regional Manager on 24.1.1997. The disciplinary authority i.e. respondent No.3 had passed the following order on 27.1.1997:

> **"Heard. While going through the enquiry report, it is noticed that the kind of charge levelled against Shri Ashwani Kumar Conductor has not been proved. Despite it, E.O. has told that no proof has been produced of A.C. amount from the**

passengers. Although the undersigned is imposing the following penalty:-

One increment stopped for one year without cumulative effect."

The order was passed by Sh. Daljeet Singh, who was holding the office of Regional Manager on 27th January, 1997. Sh. Chaman Lal, Regional Manager, HRTC Nahan Unit forwarded the case to the Divisional Manager i.e. respondent No.4 on 4.2.1997. The Divisional Manager passed the following order which has been annexed with the writ petition:

"In pursuance of letter No.HRTC-MD 1-748-12943 dated 4.2.97 from R.M. Nahan I have reciewed the case of Shri Ashwani Kumar, Conductor, he was chargesheeted U/S-14 of CCS (CCA) Rules, 1965 vide memorandum No. HTU-ESTT-28585 dated 6.2.88 for defrauding the corporation revenue amounting to Rs. 52.50 paisa. This case was entrusted to E.O. to enquire into the case. The E.O. Shri Hemant Kumar vide his Enqiry report submitted placed at P-81 and 82, has stated that the charges levelled vide above chargesheet stand proved against D.O. Regional Manager Nahan had agreed with the findings of the E.O. and had issued show cause notice for removal from service vide memorandum No. TD-i-Vig-/96-9519 dated 1.11.96.

Sh. Daljeet Singh who was working as Regional Manager, Nahan had initially signed the noting sheet on 24.1.97 when the conductor was present for personal hearing. He did not take any decision on that date. However, the case has been decided on 27.1.1997 vide N. 25. It seems that the case has been decided on that day, during the training period of Sh. C..L. Kashyap either due to some pressure or due to some extraneous reasons not connected with the merit of the case. I therefore quash the order of R.M. Nahan as at N-25. Moreover R.M. Shri Daljeet Singh is his capacity of R.M. Nahan has reported wrong facts in his observation at N-25 he has stated that the charges levelled against Shri Ashwani Kumar, Conductor have not been proved, although as stated above, the charges stood proved against the conductor. R.M. should

have agreed or disagreed with the findings of the E.O. after recording reasons for the same. This has also not been done in this case. I have considered the reply to the show cause notice submitted by the D.O. Shri Ashwani Kumar on 16.12.96. The Enquiry was conducted during 1988 and issue of show cause notice after above eight years is not against the CCS (CCA) Rules, 1965. He has further narrated his own story which should have been highlighted before the E.O. as this is connected with the facts of the case.

In view of the above observations the penalty in the show cause notice dated 1.11.96 is justified and I hereby order to impose the penalty of removal from service upon Sh. Ashwani Kumar, Condoctor.

Fair order signed be issued."

Consequently the office order dated 7th February, 1997 was passed after reviewing the order dated 27th January, 1997 and penalty of removal was inflicted upon the workman. The workman filed an appeal before the Managing Director against the order dated 7th February, 1997. The workman was conveyed vide memorandum dated 17th December, 1997 that the appeal preferred by him dated 13.3.1997 has been considered on merits by the competent authority and the same was rejected vide letter dated 3.12.1997. The copy of the decision was not conveyed to the workman. The workman feeling aggrieved by the imposition of penalty and rejection of appeal raised the industrial dispute pursuant to which the reference was made by the State Government to the Labour Court as reproduced in the preceding paras. The workman had filed the detailed statement of claim in which he had primarily contended that the Regiional Manager i.e. Shri Chaman Lal posted at Nahan Unit could not refer the matter to the Divisional Manager on 4.2.1997. He had also contended in his statement of claim that the inquiry was not conducted in accordance with law. The workman had made a specific averment in his statement of

claim that the reasons for rejection of the appeal were never conveyed to him. The employer had justified the order passed by the Divisional Manager. The employer had stated in its reply to the statement of claim that the inquiry was conducted in accordance with law.

Mr. R.P. Singh, Advocate appearing on behalf of the petitioner had strenuously argued that the order dated 7.2.1997 is not sustainable in the eyes of law since the Divisional Manager has failed to comply with the mandatory conditions as per Rule 29-A of the CCS (CCA) Rules, 1965. He also contended that the inquiry was completed in the year 1988, but the notice has been issued to the workman on 1.11.1996. He contended that the penalty could not be imposed upon him. Mr. Singh also contended that the copy of the inquiry report was supplied to the workman along with memorandum dated 1.11.1996 though the same was required to be issued to him before the disciplinary authority made up his mind with regard to imposition of penalty. He also contended that the order whereby the penalty has been imposed upon his client dated 7th February, 1997 is laconic and the same was required to be a speaking order. He also elaborated his arguments by submitted that the disciplinary authority had imposed penalty of stoppage of one increment without cumulative effect for one year and the same could not be enhanced by the Divisional Manager on the basis of the letter dated 4.2.1997 sent by the Regional Manager, Shri Chaman Lal to him. He further argued that the reasons for rejecting the appeal of his client have never been conveyed to him which has seriously prejudiced the case of his client. Lastly he submitted that the Labour Court while adjudicating the reference has over looked these vital aspects of the matter including the non-compliance of principle of natural justice by the Inquiry Officer.

Mr. H.S. Rawat, Advocate had supported the award dated 21.11.2006.

I have heard the learned counsel for the parties and perused the record.

The Court has to refer to the bare provision of Rule 29-A of the CCS (CCA) Rules, 1965 to see whether the order passed by the Divisional Manager dated 7.2.1997 is in accordance with law or not. Rule 29-A of the CCS (CCA) Rules reads thus:

> **"Rule 29-A. Review**
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> **The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice:**
>
> **Provided that no order imposing or enhancing any penalty shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 11 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 14, subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary."**

The memorandum was issued to the workman on 1.11.1996. He had filed reply to the same. He was heard personally by Shri Daljeet Singh on 24.1.1997 and penalty of withholding of one increment for one year without cumulative effect was imposed upon him on 27.1.1997. Admittedly the disciplinary authority qua the workman was the Regional

Manager i.e. respondent No.3. Shri Chaman Lal, Regional Manager, HRTC Nahan Unit sent a communication to the Divisional Manager on 4.2.1997 after the penalty was already imposed upon the workman. It was on the basis of the letter dated 4.2.1997 addressed by Shri Chaman Lal that the matter has been reviewed by the Divisional Manager. Primarily the order passed by Shri Daljeet Singh had been quashed on the ground that one Shri C.L. Kashyap was on training or due to some pressure or due to some extraneuous reasons not connected with the merit of the case had weighed with the disciplinary authority. It is evident from the note reproduced above of the Divisional Manager that he had come to the conclusion that the Regional Manager, Daljeet Singh had drawn wrong conclusion with regard to the findings recorded by the Inquiry Officer in his report. The requirement of Rule 29-A of the CCS (CCA) Rules, 1965 is that the order could be reviewed only if there was any new material or evidence which could not be produced or was not available at the time of passing of the order. No new material has been brought on record by the employer nor any evidence has been placed on record which could result in reviewing the earlier order dated 27.1.1997. The entire material i.e. copy of the inquiry report and the reply filed by the workman to the show cause notice were before the disciplinary authority on 27.1.1997 when the earlier order was passed by the Regional Manager Shri Daljeet Singh.

The matter is required to be considered from another angle. Since the Divisional Manager had enhanced the penalty to removal from service, the workman was required to be issued a notice by him independently of the notice which was earlier issued to the workman on 1.11.1996. The Divisional Manager had only taken note of the reply furnished by the workman to earlier memorandum dated 1.11.1996 and consequently passed the order dated 7.2.1997. The order dated 7.2.1997 is *void ab*

initio for non-compliance with the principle of natural justice since no notice was issued to him. The order whereby the penalty of removal has been imposed upon the workman is also laconic.

Their Lordships of the Hon'ble Supreme Court have held in latest judgment in ***Narpat Singh Versus Rajasthan Financial Corporation***, 2007 (1) Scale 458 that whatever defence has been put by the incumbent should have been considered and thereafter proper speaking order ought to have been passed. Their Lordships have held as under:

> **"Aggrieved against the High Court order, the present appeal has been filed. We need not to go into the question whether the proper procedure for recording the major penalty has been followed or not. In this case, suffice it to say that the impugned judgment which has been passed by the Rajasthan Financial Corporation is purely laconic order. Even after going through the regulation 37 it is expected that whatever the defence has been put by the incumbent should have been considered and thereafter a proper speaking order ought to have been passed. But the order in question dated 25.6.1983 is hopelessly laconic order in which only the charges have been mentioned and whatever defence has been given by the incumbent has not been considered at all. We could have set aside this order being a non-speaking order and remanded the matter back to the Financial Corporation, but looking to the distance of time i.e. the order passed on 25.6.1983, we have been informed by learned counsel for the appellant that the incumbent has already taken voluntary retirement."**

In the present case also though the workman was required to be issued a fresh notice once the Divisional Manager had decided to review the earlier order but even the reply furnished by the workman to earlier show cause notice dated 1.11.1996 has not been considered at all.

It is evident from the memorandum dated 1.11.1996 that the copy of the inquiry report has been supplied to the workman for the first time

along with this memorandum. It is settled law by now that copy of the inquiry report is required to be supplied to the delinquent before the disciplinary authority makes up its mind with regard to imposition of penalty. The Regional Manager had already made up his mind provisionally as is clear from the language employed in the memorandum to impose the penalty of removal from service upon the workman.

The question whether the copy of the inquiry report is to be supplied to the delinquent or not before the imposition of penalty is no more *res-integra* in view of the law laid down by the Hon'ble Supreme Court in ***Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others***, (1993) 4 SCC 727. Their Lordships of the Hon'ble Supreme Court have held as under:

> **"The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice required that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it**

is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

The position in law can also be looked at from a slightly different angle. Article 311 (2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him." The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by over looking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is

to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrived at its conclusion with regard to his guilt or innocence of the charges."

Accordingly it is held that the workman was required to be issued a copy of the inquiry report before the disciplinary authority had made up its mind provisionally to impose the penalty of removal upon the workman. The non-supply of the copy of the inquiry report to the workman has seriously prejudiced him and had resulted in violation of the principle of natural justice.

The workman had filed an appeal against the imposition of penalty on 7.2.1997. The workman had raised as many as five grounds in his

appeal dated 13.3.1997. The appeal preferred by the workman was rejected as per memorandum dated 17th December, 1997 on 3.12.1997. The reasons for rejection of the appeal by the appellate authority have not been communicated to the workman. It was the duty cast upon the Managing Director i.e. the appellate authority to supply the reasons to the workman to enable the workman to effectively challenge the order before the appropriate forum.

Their Lordships of the Hon'ble Supreme Court in ***M/s. Ajantha Industries and others Versus Central Board of Direct Taxes and others***, AIR 1976 SC 437 have held that the reasons must be conveyed to the parties. Their Lordships have held as under:

> **"This judgment was rendered by this Court on December 21, 1956, and we find that in the 1961 Act Section 127 replaced Section 5 (7A) where the legislature has introduced, inter alia the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason why before making an order of transfer the legislature has ordinarily imposed the requirement of a show cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of Section 127 (1). We are unable to accept this submission.**

The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

We are clearly of opinion that the requirement of recording reasons under Section 127 (1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee."

Accordingly the memorandum dated 17th December, 1997 is bad in law and is liable to be quashed and set aside.

It is strange that though the workman was served with a charge-sheet vide letter dated 6.2.1988 and the inquiry was completed in the year 1988 but the notice has been issued to the workman in the year 1996. The employer has not placed any material on record why no action was taken on the inquiry report when the same was completed in the year 1988. There should not be inordinate delay in furnishing the inquiry report to the delinquent, but in the present case, the copy of the inquiry report has been supplied to him along with memorandum dated 1.11.1996 after more than eight years. The disciplinary proceedings are also liable to be quashed on this ground since the employer has failed to explain the inordinate delay in concluding the disciplinary proceedings with effect from 1988 to 1996.

Mr. R.P. Singh, Advocate though had argued vehemently that the inquiry has not been conducted in accordance with law, but he had failed to point out infraction of any mandatory rules by the Inquiry Officer. The

Inquiry Officer had taken into consideration the statement of PW-1 and PW-2 as well as of Sh. Balbir Singh produced by the petitioner while holding that the charges stood proved against the workman.

In view of the above discussion, the position which emerges is that:

i) **the findings recorded by the Labour Court that the workman was served with a show cause notice before his removal is incorrect;**
ii) **the workman was required to be served with a show cause notice at the time when the Divisional Manager had decided to enhance the penalty from stoppage of one increment for one year without cumulative effect to removal from service;**
iii) **earlier notice dated 1.11.1996 cannot be termed as sufficient compliance in terms of the provisions of Rule 29 (A) of the CCS (CCA) Rules, 1965;**
iv) **the Labour Court has not discussed the plea raised by the workman with regard to not conveying the reasons for rejecting his appeal and the workman has seriously been prejudiced by the act of the respondents by not supplying him the reasons for rejecting his appeal to enable him to challenge the appellate order effectively;**
v) **as far as the holding of inquiry is concerned, the workman could not point out any violation of the mandatory provisions of the CCS (CCA) Rules, 1965 under which the inquiry was initiated and concluded. The Inquiry Officer had come to a right conclusion on the basis of the evidence led by the workman as well as the employer that the charges No.1 and 2 were proved.**

Accordingly, the writ petition is allowed. The award dated 21.11.2006 passed by the Labour Court along with order dated 7th February, 1997 is quashed and set aside. The respondents are directed to reinstate the workman within 30 days from the receipt of certified copy of this judgment. However, it is clarified that the penalty of stoppage of

one increment for one year without cumulative effect as per order dated 27th January, 2007 will remain as such. There shall be no order as to costs.

(Rajiv Sharma), Judge

October 12, 2007
Awasthi